(8)

No. 87-1661

In the Supreme Court of the United States

OCTOBER TERM, 1988

ASARCO INCORPORATED, ET AL., PETITIONERS

v.

FRANK AND LORAIN KADISH, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the Arizona Supreme Court correctly concluded that Section 28 of the New Mexico-Arizona Enabling Act prohibits the leasing of mineral lands held in trust for the benefit of the state's public schools at less than the appraised true value of the lease.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. In Section 24 of the New Mexico-Arizona Enabling Act of 1910, ch. 310, 36 Stat. 572-573, Congress provided that "sections two, sixteen, thirty-two, and thirty-six" "in every township in said proposed State not otherwise appropriated at the date of the passage of this Act are hereby granted to the said State for the support of common schools." Arizona thereby received more than eight million acres of "school trust lands" (Pet. App. 4a). Section 24 stated that "mineral" lands did not pass to the state, but provided that Arizona could obtain other lands in lieu of mineral lands. Under *United States* v. *Sweet*, 245 U.S. 563, 572 (1918), and *Wyoming* v. *United States*, 255

U.S. 489 (1921), the mineral lands that did not pass to Arizona were lands known in 1910 to contain minerals; lands on which minerals were subsequently discovered passed to the state by the Enabling Act.

The distinction the Court drew between lands known to contain minerals on the date of the grant and lands on which minerals were subsequently discovered led to numerous title disputes in the many western states to which Congress had granted lands to be held in trust for the benefit of the public schools. In order to settle such disputes, Congress, by the Act of January 25, 1927, ch. 57, § 1, 44 Stat. 1026-1027, extended the original grants to cover mineral lands as well. This Act, known as the Jones Act, provided that its grants of mineral lands "shall be of the same effect as prior grants." Jones Act, subsection (a). The Act provided that any sale of these lands must contain a reservation of minerals to the state, but empowered the states to lease the lands "as the State legislature may direct," with the proceeds of the leases "to be utilized for the support or in the aid of the common or public schools." Jones Act, subsection (b).

Section 28 of the New Mexico-Arizona Enabling Act (36 Stat. 574-575) currently provides, as it has always provided, that the school trust lands "shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction * * *, notice of which public auction shall first have been duly given by advertisement," and that "[a]ll lands [and] leaseholds * * * shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained." As amended in light of the Jones Act in 1936 and to establish special rules for oil and gas leases in 1951, it also provides that "[n]othing herein contained shall prevent" leases of three types. First, the lands may be leased for non-mineral purposes, "in such manner as the Legislature of the State of Arizona may prescribe,"

for ten years or less. Second, the lands may be leased for mineral purposes other than the production of oil, gas, and hydrocarbon substances, "in such manner as the Legislature of the State of Arizona may prescribe," for 20 years or less. Third, the lands may be leased for the production of oil, gas, and other hydrocarbon substances, "in any manner, with or without advertisement, bidding, or appraisement, and under such terms and provisions as the Legislature of the State of Arizona may prescribe," for 20 years or less.

Article 10 of the Arizona Constitution, which "is 'practically a rescript of section 28 of the Enabling Act' " (Pet. App. 5a, quoting *Murphy* v. *State,* 65 Ariz. 338, 348, 181 P.2d 336, 342 (1947)), incorporates the appraisal, advertisement, and auction provisions of Section 28 of the Enabling Act. The Arizona Constitution goes beyond the Enabling Act by subjecting "all lands otherwise acquired by the State," not just the school lands granted to the State by the Enabling Act, to its restrictions (art. 10, §§ 1, 9).

2. The Arizona statute governing mineral leasing on public lands provides "for payment to the state by the lessee of a royalty of five per cent of the net value of the minerals produced from the claim" (Ariz. Rev. Stat. Ann. § 27-234(B) (1976 & Supp. 1987)). "Net value" is further defined as the gross value of the minerals after processing minus production costs, transportation costs, and taxes (*ibid.*). The statute does not provide for appraisal or require that the state receive, at the least, the value ascertained by an appraisal. Since deductible costs may exceed the gross value of the minerals produced, it is possible that no royalty will be paid (Pet. App. 26a).

Several individual taxpayers who claim that their taxes support public education in Arizona and the Arizona Education Association, which represents approximately

20,000 public school teachers throughout the state, brought this suit in state court against the appropriate state offices and a mining company seeking a declaration that Ariz. Rev. Stat. Ann. § 27.234(B) (1976 & Supp. 1987) is void. More specifically, they contended that the statute is inconsistent with the requirement that state lands be appraised and leased at the value ascertained by the appraisal. A number of mining companies intervened and contended that Section 28 of the Enabling Act and Art. 10, § 3 of the Arizona Constitution, which, following the Jones Act, provide for the leasing of mineral lands "in such manner as the Legislature of the State of Arizona may prescribe," authorize the legislature to provide for leasing without regard to the appraisal requirement. The plaintiffs, in response, contended that that language authorizes the legislature to determine "the procedure of leasing" but does not authorize it to avoid the "prior appraisal requirements" (Pet. App. 38a). The trial court recognized that "there is strong language in *Alamo Land and Cattle Company Inc.* v. *Arizona*, 424 U.S. 295 (1976) which indicates that prior appraisement is necessary before leases shall be given," but nevertheless granted the mining companies' motion for summary judgment (Pet. App. 39a).

3. The Supreme Court of Arizona reversed (Pet. App. 1a-36a). It first noted the "sad experience" that led Congress to enact the strict trust terms of the New Mexico-Arizona Enabling Act (Pet. App. 5a-6a (quoting *Murphy*, 65 Ariz. at 351, 181 P.2d at 344)). Of the 23 states that had previously been granted lands, the " 'dissipation of the funds by one device or another, sanctioned or permitted by the legislatures of the several states, left a scandal in virtually every state' " by 1910 (*ibid.*). Through the New Mexico-Arizona Enabling Act, Congress "intended to severely circumscribe the power of state government to

deal with the assets of the common school trust" (Pet. App. 6a). The court noted (Pet. App. 20a) that in *Lassen* v. *Arizona ex rel. Arizona Highway Department*, 385 U.S. 458, 463, 466 (1967), this Court observed that "[t]he central problem which confronted the [Enabling] Act's draftsmen was * * * to devise constraints which would assure that the trust received in full fair compensation for trust lands," and they solved this problem by "unequivocally demand[ing] * * * that the trust receive the full value of any lands transferred from it."

The court concluded that the mining companies' contention that the 1936 amendment of Section 28 of the Enabling Act (which authorizes mineral leasing "in such manner as the Legislature of the State of Arizona may prescribe") permits the state legislature to avoid the appraisal requirement "is completely contrary to the objectives sought by the restrictive wording of other portions of the Enabling Act" (Pet. App. 14a). As did the courts in *State Land Department* v. *Tucson Rock & Sand Co.*, 12 Ariz. App. 193, 195, 469 P.2d 85, 87 (1970), vacated on other grounds, 107 Ariz. 74, 481 P.2d 867 (1971), and *Oklahoma Education Ass'n* v. *Nigh*, 642 P.2d 230, 237 (Okla. 1982), the Arizona Supreme Court concluded that that language "is not an unbridled grant of power that would allow the legislature to avoid the trust restrictions and duties imposed by the entirety of the Enabling Act," but instead grants authority to set lease terms not in conflict with the express terms of the Enabling Act (Pet. App. 15a).

The court further stated that the amendment of Section 28 of the Enabling Act in 1951 reinforced its conclusion that the 1936 amendment of the Enabling Act did not give the Legislature authority to avoid the appraisal requirement. The 1951 amendment added the provision stating that hydrocarbon leases (but not other mineral leases)

could be "made in any manner, with or without advertisement, bidding, or appraisement, and under such terms and provisions as the Legislature of the State of Arizona may prescribe." By that amendment, the court stated, "Congress showed that when it intended to free the state from the dispositional restrictions, it would do so explicitly" (Pet. App. 19a). "Moreover," the court added (*id.* at 20a), "if Congress did not regard the dispositional restrictions of the original Enabling Act as effective against mineral leases, why did it bother to create specific exemptions in 1951 for oil, gas, and other hydrocarbon leases?" [1]

The Arizona Supreme Court also noted that this Court's decision in *Alamo Land & Cattle Co.* v. *Arizona*, 424 U.S. 295 (1976), supported its decision. In that case, the federal government had condemned school trust lands, and a company that had leased some of the condemned lands from Arizona sought an award to compensate it for the fact that the rent it owed the state was less than the fair rental value of the property. In remanding the case for further determinations, the Court questioned the validity of the company's claim, even though Section 28 of the Enabling Act provides that grazing lands, like mineral lands (other than lands containing oil and gas), may be leased

[1] The Arizona Supreme Court also found support for its construction of Section 28 in Joint Resolution No. 7, a 1928 congressional resolution relating to New Mexico. The resolution stated that New Mexico could amend its constitution to provide that mineral leases on school lands "may be made under such provisions relating to the necessity or requirement for or the mode and manner of appraisement, advertisement, and competitive bidding, and containing such terms and provisions, as may be provided by act of the legislature." If Congress had generally intended through the Jones Act to authorize the state legislatures to avoid the appraisal, advertisement, and competitive bidding requirements, then, the court concluded, "it would have used explicit language to accomplish that result, just as it did for New Mexico in Joint Resolution No. 7" (Pet. App. 17a).

"in such manner as the Legislature of the State of Arizona may prescribe." The Court relied on the fact that Section 28 "has a protective provision against the initial setting of lease rentals at less than fair rental value" that "provides that a leasehold, before being offered, shall be appraised at 'true value' " (424 U.S. at 305, 306).[2] That ruling, the Arizona Supreme Court stated, "seem[s] fully dispositive of the issue" presented in this case (Pet. App. 22a).

Having concluded that "the Enabling Act and its rescript in art. 10 of the Arizona Constitution, forbid the state from making nonhydrocarbon mineral leases without appraisal or for less than their true value" (Pet. App. 24a), the court then considered the validity of the state's mining statute. Because the statute provides that the royalty due is five percent of the net value of the minerals produced, and the deductible costs used to calculate net value may exceed the gross value of the minerals, the court concluded that "under § 27-234(B) it is possible for a lessee to extract minerals from school trust lands and pay no royalty whatsoever" (*id.* at 26a). After adding that "we have no way of knowing from this record whether such circumstances have existed" (*ibid.*), the court remanded with instructions that the trial court enter a judgment declaring the statute

[2] The Court in *Alamo Land and Cattle Company* further explained that a difference between the "rental specified in the lease and the fair rental value" could arise in one of two ways (424 U.S. at 304). First, it could be that "the lease rentals were set initially at less than fair rental value" (*ibid.*), in which case the lease would be void under Section 28 of the Enabling Act. Second, the lease might initially have been set at the fair rental value, but that value might have increased during the term of the lease (*id.* at 305), in which case the company might be entitled to an award to compensate it for the loss of the lease. The Court remanded with instructions that the lower courts determine how the difference between the rental specified in the lease and the fair rental value arose and enter judgment accordingly (*id.* at 311).

unconstitutional and take further evidence to determine "what further relief is appropriate" (*id.* at 29a).

DISCUSSION

As an initial matter, it appears that the plaintiffs do not satisfy the standing requirements of Article III. In that circumstance, under *Doremus* v. *Board of Education,* 342 U.S. 429, 434 (1952), the decision below is merely an advisory opinion and this Court lacks jurisdiction to review it. In addition, this case is in an interlocutory posture, and review by this Court would be premature.

In any event, the decision below is correct. While the court in *Jensen* v. *Dinehart,* 645 P.2d 32 (Utah 1982), viewed the Jones Act as freeing mineral lands from restrictions in enabling acts, which is not how the court below understood that Act, review is nevertheless not warranted. The decision below was based specifically on the meaning of Section 28 of the New Mexico-Arizona Enabling Act, which the court correctly viewed as not allowing the leasing of mineral lands in Arizona at less than appraised "true value" regardless of the effect of the Jones Act in other contexts. The two decisions, therefore, are not squarely in conflict, and the applicability of a decision by this Court in this case would accordingly be quite limited. Moreover, a recent decision by the Arizona Supreme Court, as well as that court's opinion in this case (Pet. App. 24a, 27a), indicate that the result it reached in this case is in any event independently supported by Article 10 of the Arizona Constitution.

1. Had this suit been brought in federal court, it would have been required to be dismissed because the plaintiffs lack standing. The "core component" of standing under Article III is that the plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright,* 468 U.S. 737, 751 (1984); *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.,* 454 U.S. 464, 472 (1982).

It appears that the individual taxpayers here claimed standing as citizens or taxpayers, rather than because their own more specific interests were injured. Compl. para. III. Under Arizona law, taxpayers have standing to seek to enjoin pecuniary loss to the public fisc. *Smith* v. *Graham County Community College,* 123 Ariz. 431, 600 P.2d 44 (Ariz. App. 1979). Although the courts of the states are not barred by the Federal Constitution from recognizing standing on such a theory, this Court has consistently held that a person does not satisfy the standing requirement of Article III based on nothing more than his status as a citizen or taxpayer who is interested in the conduct of his government. *Schlesinger* v. *Reservists Committee to Stop the War,* 418 U.S. 208, 215-221 (1974); *United States* v. *Richardson,* 418 U.S. 166, 171-175 (1974); *Doremus,* 342 U.S. at 433-435; *Frothingham* v. *Mellon,* 262 U.S. 447 (1923); cf. *Allen* v. *Wright,* 468 U.S. at 754-755, 756 n.21; *Valley Forge,* 454 U.S. at 482, 484-485 n.20. Accordingly, the individual taxpayers lack standing to invoke the jurisdiction of an Article III court.

The Arizona Education Association alleged that "[t]he failure of the defendants to collect the true value on leases of State mineral lands * * * imposes an adverse economic impact on the Association and its members." Compl. para. IV. By that it presumably means that the teachers it represents will receive more pay if it prevails in this suit. It is not at all clear, however, that that result would be " 'likely' to follow from a favorable decision." *Allen* v. *Wright,* 468 U.S. at 751 (quoting *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 38, 41 (1976)). There has been no showing that if the state ulti-

mately receives additional revenues as a result of leasing mineral lands following an appraisal, the state's teachers will receive pay raises they otherwise would not receive.[3] It would seem at least as likely that, if additional revenues are received from mineral leases, taxes will be reduced correspondingly or, if additional funds from mineral leases are used to benefit the schools, the benefits will not be in the form of increased teacher compensation.

If the plaintiffs lack standing under Article III, then this Court presently lacks jurisdiction, even though the mining companies may well be injured by the relief to be granted on remand. In *Doremus,* this Court held that while a state court may "render an opinion on a federal constitutional question even under such circumstances that it can be regarded only as advisory, * * * [b]ecause our own jurisdiction is cast in terms of 'case or controversy', we cannot accept as the basis for review, nor as the basis for conclusive disposition of an issue of federal law without review, any procedure which does not constitute such" (342 U.S. at 434). See also *Phillips Petroleum Co.* v. *Shutts,* 472 U.S. 797, 804 (1985); *Secretary of State of Maryland* v. *J. H. Munson Co.,* 467 U.S. 947, 954 & n.4 (1984); *Revere* v. *Massachusetts General Hosp.,* 463 U.S. 239, 243 (1983). That holding is controlling here if, as we have suggested, the decision below constitutes, at this juncture, an advisory opinion for Article III purposes. If the trial court declares the mining companies' leases void on remand, they would then have standing to challenge that decision in an appropriate action. The prior decision of the Arizona

[3] Indeed, as amicus Clinton Campbell Contractor, Inc., suggests (Br. 9), it is not even clear that Arizona will receive additional revenues if the appraisal requirements are followed. If the mining companies' leases were declared void, as the plaintiffs have requested (Pet. App. 38a), then state revenues from mineral leases presumably would decline in the short term.

Supreme Court that the state mining statute is contrary to Section 28 would not bar such an action, since, as this Court stated in *Doremus,* an advisory opinion on the meaning of the Enabling Act cannot be the "basis for conclusive disposition of an issue of federal law" (342 U.S. at 434).[4] See also our discussion of this question in our amicus brief (at 13-17) in *Alaska Miners Ass'n* v. *Trustees for Alaska,* cert. denied, No. 87-205 (May 31, 1988).[5]

In addition, this case is in an interlocutory posture and it is not possible at this time to determine whether the mining companies will in fact suffer injury. While Section 28 provides that leases "not made in substantial conformity with the provisions of this Act shall be null and void," it is not clear at this juncture whether any leases will be held void on that ground or what criteria will be utilized to determine "substantial conformity." The Arizona Supreme

[4] It has been suggested that *Doremus* could be read to mean that dismissal of the petition is appropriate only if the state supreme court rejected the plaintiff's challenge in a proceeding in which the plaintiff did not satisfy Article III's standing requirements, and that this Court properly could vacate a state court decision that sustained the challenge in such a proceeding. See *Barnes* v. *Kline,* 759 F.2d 21, 63 n.16 (D.C. Cir. 1984) (Bork, J., dissenting), vacated as moot, No. 87-781 (Jan. 14, 1987); L. Tribe, *American Constitutional Law* 114 n.20 (2d ed. 1988). We disagree. *Doremus* appears to make clear that a federal court will not give preclusive effect to the unreviewed state court decision in a *future* case, not that this Court could vacate a state court decision on review in the *same* case because of the absence of a case or controversy. The latter would have been inconsistent with the Court's explicit disclaimer (342 U.S. at 434) of any suggestion that a state court is barred from rendering an advisory opinion on a federal constitutional question where Article III standing is lacking.

[5] We have furnished copies of our amicus brief in *Alaska Miners Association* to the parties here.

Court appeared to view the requirement that the state obtain "true value" for the school trust lands it leases as the key requirement of Section 28 and, as it noted (Pet. App. 26a), the record does not show whether any mineral lands have been leased for less than "true value." That is apparently why the court ordered the trial court to take further evidence to determine what relief may be appropriate (*id.* at 29a). Accordingly, review by this Court would be premature.

2. In any event, the Arizona Supreme Court correctly concluded that the appraisal requirement of Section 28 applies to mineral leases. As that court stated, the strict requirement in the New Mexico-Arizona Enabling Act that lands be appraised and then sold or leased "for a consideration [not] less than the value so ascertained" was Congress's response to the "sad experience" in other states (Pet. App. 5a (quoting *Murphy,* 65 Ariz. at 351, 181 P.2d at 344)). Accordingly, it would be inappropriate to limit the reach of that requirement, which was at the heart of the Enabling Act, without a clear indication that Congress so intended. The phrase authorizing leasing of mineral lands "in such manner as the Legislature of the State of Arizona may prescribe" is not such a clear indication. It may reasonably be read, as the court below and the other state courts it cited have concluded (Pet. App. 15a), as authorizing the legislature to set lease terms not in conflict with the express terms of the Enabling Act.

The 1951 amendment of Section 28 strongly supports that conclusion since, as the court below stated (Pet. App. 18a-20a), there would have been no reason to have provided expressly that hydrocarbon leases were not subject to the appraisal requirement, in addition to providing that leases may be granted "as the Legislature of the State of Arizona may prescribe," if the latter phrase itself negated the express appraisal requirements of the Enabling Act.

Moreover, since 1936 the Enabling Act had provided for the leasing of mineral lands, including leases for oil and gas, "in a manner as the State legislature may direct" (Act of June 5, 1936, ch. 517, 49 Stat. 1477), but that language was not understood to free the state from the appraisal, advertisement, and auction requirements. Indeed, the legislative history shows that the 1951 amendment was adopted specifically to remove the requirement of "10 weeks of detailed advertisement" that had "hindered" the development of oil and gas resources. S. Rep. 194, 82d Cong., 1st Sess. 2 (1951); see also H.R. Rep. 429, 82d Cong., 1st Sess. 2 (1951).[6]

This Court in *Alamo Land & Cattle Co.* read Section 28 as the Arizona Supreme Court did. It is true, as petitioners note (Pet. 18), that the Court's opinion "does not mention the language in the amended Section 28 that permits Arizona to make grazing leases [or, here, mineral leases] 'in such manner as the Legislature of the State of Arizona may prescribe.'" But that simply emphasizes that a natural reading of Section 28 does not suggest that by that

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[6] Petitioners have no adequate answer to the Arizona Supreme Court's conclusion that the 1951 amendment shows that Congress understood that specific language authorizing leasing without appraisal was required to make the appraisal requirement of the Enabling Act inapplicable, and that it would have added such language to the mineral lease proviso had it intended to authorize non-hydrocarbon mineral leasing without appraisal. They suggest (Pet. 15-16) that Congress adopted specific language relating to hydrocarbon leases in the 1951 amendment because it might have thought that the lengthy oil and gas leases it wanted to authorize could be regarded as sales. But, while that might explain why Congress expressly provided in Section 28 for leasing "for an initial term of twenty years or less and as long thereafter as oil, gas, or other hydrocarbon substance may be procured therefrom in paying quantities," it would not explain why Congress specifically authorized hydrocarbon leases "with or without advertisement, bidding, or appraisement."

phrase Congress intended to free the state from the specific restrictions of the Enabling Act.[7]

3. Contrary to petitioners' further contention (Pet. 8-9), review is not warranted to resolve the tension between the decision below and the Utah Supreme Court's decision in *Jensen*.[8] Utah's Enabling Act, enacted in 1894 (645 P.2d at 33 n.3), provides that all proceeds from the school trust lands that Congress granted it must be placed in a permanent fund, " 'the interest only of which shall be expended' " (*id.* at 33 (quoting § 10 of the Utah Enabling Act, ch. 138, 28 Stat. 110)). In 1939, Utah amended its Constitution to provide that, while proceeds from sales of school trust lands had to be placed in the permanent fund, the proceeds of mineral leases could be placed in another fund, along with the interest from the permanent fund, to be used for current expenses of the state's public schools. The Utah Supreme Court upheld that provision in *Jensen*, stating that the Jones Act "completely free[d]" the school trust mineral lands "from any restriction or limitation that

[7] Nor is there merit to petitioners' suggestion (Pet. 16) that only the Jones Act, and not the Enabling Act or the Arizona Constitution, is relevant to the lands known in 1910 to contain minerals that were granted to Arizona in 1927. Article 10 of the Arizona Constitution, the "rescript" of Section 28 of the Enabling Act, differs from it by expressly providing that "all lands * * * acquired by the state" are subject to its restrictions (§§ 1, 9).

[8] There is no merit at all to petitioners' contention (Pet. 16-17) that review is warranted because the decision below limits state sovereignty. Petitioners, who are mining companies, plainly have no interest in upholding state sovereignty, and the parties who might have such an interest, the Arizona officials and departments that were defendants below, have chosen not to seek review of the Arizona Supreme Court's decision. Moreover, the challenged decision was alternatively based on Article 10 of the Arizona Constitution (Pet. App. 27a). Accordingly, the federal-state balance plainly was not upset by the decision below.

may have theretofore existed, except as to use for public schools" (645 P.2d at 35).

Even if the Jones Act did free the states from the restrictions in their enabling acts, it is unlikely that the result here would be affected. In *Lassen*, 385 U.S. at 464, this Court, while strictly construing the appraisal requirement of Section 28 of Arizona's Enabling Act, declined to apply its advertisement and auction requirements in a case where the state wanted to acquire the land at issue by condemnation. The Arizona Supreme Court recently "decline[d] to follow that case in interpreting the identical language in the Arizona Constitution." *Deer Valley Unified School District No. 97* v. *Superior Court*, No. CV-86-0577-T (June 30, 1988), slip op. 11. Emphasizing that the Enabling Act "merely sets out the minimum protection for our state trust land," the court concluded that Article 10 of the Arizona Constitution "does much more" (slip op. 12). Thus, while the court's decision here emphasized the language of Section 28 the Enabling Act, the result it reached is independently supported by its construction of Article 10 of the Arizona Constitution, which it also cited in this case as an alternative basis for its holding (Pet. App. 27a).[9] There is no federal impediment to a more restrictive state mineral leasing scheme than that required by the Enabling Act.

[9] We do not mean to suggest that, under the principles of *Michigan* v. *Long*, 463 U.S. 1032 (1983), this Court lacks jurisdiction to review the Arizona Supreme Court's decision. The court relied primarily on analysis of the federal Enabling Act in reaching its decision in this case, so its decision "fairly appears to rest primarily on federal law" (*id.* at 1040). However, given the court's recent decision in *Deer Valley*, it seems plain that the court would reach the same result it reached here if it were required to base its decision exclusively on the Arizona Constitution rather than on the terms of the Enabling Act, and that practical consideration weighs against reviewing the decision below.

Moreover, the Jones Act was not central to the rationale of the court below, which relied primarily on the specific purposes motivating Congress to enact Section 28 and its modifications in 1936 and 1951, which indicate that Congress intended Arizona to comply with the restrictions in its Enabling Act in leasing the mineral lands granted to it whatever effect the Jones Act might have in other contexts. Accordingly, while the court below did not have the same view of the effect of the Jones Act as did the Utah Supreme Court, there is no square conflict. Moreover, if an issue analogous to that presented here or in *Jensen* arises in another state, the particular history of the state's enabling act will surely be relevant. Accordingly, the applicability of a decision by this Court in this case would be limited. For this reason as well, review by this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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